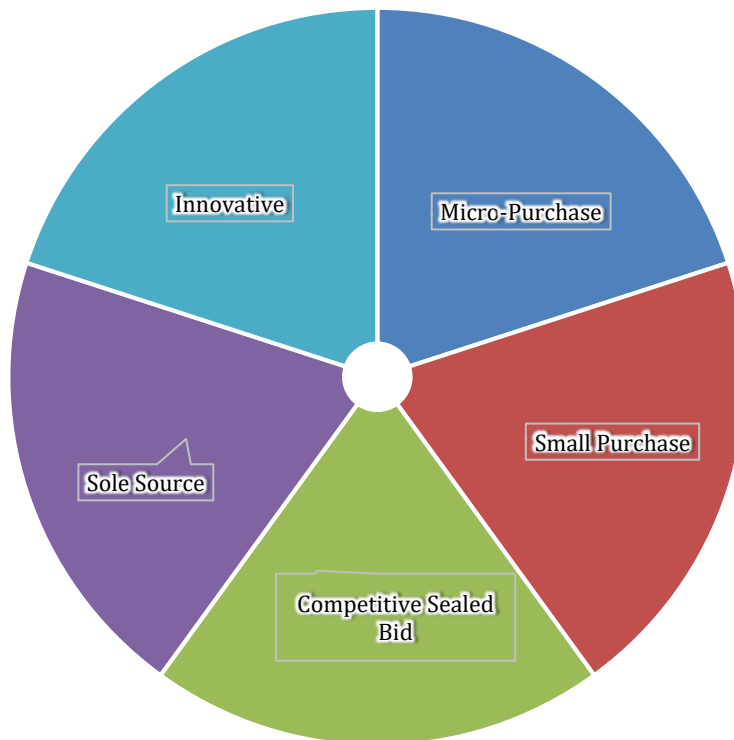


GRANTS MANAGEMENT GUIDE

PROCUREMENT



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Procurement

The procurement of goods and services, such as buying supplies, retaining design professionals and awarding construction contracts is subject to the requirements of the Common Rule for Uniform Administrative Requirements for Grants, carried out by municipalities or not for profit entities, specifically [2 CFR part 200.318](#) that states the implementation by the Federal Agency of Housing and Urban Development of the Common Rule. **Note Exception: Procurement regulations do not apply to homeowners/individuals or private, for profit entities/developers. However, there must still exist a reasonableness of costs.**

Municipalities doing their own procurement with VCDP grant funds must follow procurement procedures and standards equal to or exceeding those explained under Agency Procedures, Chapter 10. If you have questions about the applicability of those standards, contact your CD Regional Coordinator.

Key Elements of Procurement

The key element of procurement is that the entire process provides for full and open competition. In order to meet this standard, you should:

- establish reasonable qualification requirements;
- establish reasonable levels of bonding and experience;
- establish competitive pricing between firms or affiliated companies;
- consultants on retainer must have been hired competitively;
- establish written procurement selection procedures.

Four Methods of Procurement

The appropriate method for any given product or service is dependent on:

- the estimated cost or price;
- whether the procurement is for a service or product, and the type of contract to be utilized;
- whether the service or product is unique; and
- whether there is any eligible, qualified competition.

Procurement Principals

Procurement principals apply to the hiring of staff, consultants, or any other services. The principal procurement methods are:

1. **Micro-Purchase Procedures-** are used for purchase of supplies or services that do not exceed the threshold (currently those with an aggregate dollar amount of \$3,000 or less.
2. **Small Purchase Procedures-** Less than \$150,000 are those simple and informal procurement methods for securing services, supplies, or other property that do not cost more than current threshold of \$150,000.
 - a) **Competitive Negotiation:** This method is used for contracts requiring services, supplies and materials. It also can be used for construction services costing less than \$150,000 that do not go through the sealed bid process. For construction services this method must result in a firm fixed price contract, with the selection of the contractor based on price. Proposals should be requested from a number of sources and the Request for Proposal (RFP) should be publicized. Negotiations must be conducted with more than one source and either a fixed price or cost reimbursement with an upset limit contract may be awarded, depending on what is appropriate to the project. If competitive negotiation is used, the following apply:
 - Proposals should be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The request for proposals (RFP) should be publicized and reasonable requests from other sources to compete should be honored to the maximum extent possible.
 - The RFP should identify all significant evaluation factors, including price or cost, where required, and their relative importance.
 - You should provide mechanisms for evaluation of the technical aspects of the proposals received, as well as an evaluation of references and past work.
 - The award should be made to the responsible qualified bidder whose proposal will be most advantageous to you. Unsuccessful bidders should be notified promptly in writing.
 - You may use competitive negotiation procedures for procuring architectural and engineering services. The process begins by issuing a request for qualifications (RFQ). The respondents' qualifications are then evaluated and the most qualified competitor is selected, subject to negotiation of the cost of services for the project.
3. **Competitive Sealed Bids:** Sealed bids are publicly solicited and a firm fixed-price contract (lump sum or unit-price) is awarded to the responsible qualified bidder whose bid, when in conformance with all terms and conditions of the invitation for

bids, is the lowest price. In order for formal advertising to be feasible, appropriate conditions must be present, including, at a minimum, the following:

- a complete, adequate, and realistic specification or purchase description;
- two or more responsible suppliers who are willing and able to compete effectively for your business; and
- the procurement lends itself to a firm, fixed-price contract and selection of the successful bidder can be appropriately made primarily on the basis of price.

If formal advertising is used for procurement under a grant, the following requirements apply:

- At least 15 days prior to the bid opening date, bids should be solicited from an adequate number of known suppliers. In addition, the invitation to bid should be advertised in a newspaper of general circulation in the municipality at least twice in a two-week period. The time between the initial public notice and the opening of bids should be a minimum of 15 days. Other methods of solicitation include Electronic Bulletin Boards, direct mailings to potential vendors, direct mailings to vendors on a prequalified list, and/or publication in trade journals, the Works-in-Progress, and the Dodge Reports.
- The invitation for bids, including specifications and pertinent attachments, should clearly define the items or services needed; and indicate that in the event all bids received are over the amount budgeted the Grantee and/or Subgrantee/Borrower (Developer) reserves the right to conduct value engineering with the lowest and most qualified bidder.
- The bids should be logged in with the time and date of receipt, name of bidder and a procurement number; all bids received must remain sealed and in a safe place until the bid opening; the bids must be opened publicly at the time and place stated in the invitation to bid, and minutes to the bid opening must be maintained.
- Neither the cost-plus-a-percentage, nor the percentage-of-construction cost methods of contracting are allowed when you are spending federal money.
- A firm, fixed-price contract award should be made by written notice to the responsible qualified bidder whose conforming bid was the lowest.
- All rejected bidders must be notified in writing, unless present at the bid opening.

- Any and all bids may be rejected when there are sound, documented business reasons in the best interest of the program.
4. **Negotiated noncompetitive procurement (sole source)**, which is the least preferred method and requires prior approval in writing from the Secretary of the Agency. Approval for sole source procurement is not routinely granted, and can often become more time consuming than the competitive process. This means of procurement is through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined to be inadequate. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:
- the item is available only from a single source;
 - public exigency or emergency means that there is an urgency for the service that will not permit a delay which would result from a competitive process; or
 - after solicitation from a number of sources, competition is determined to be inadequate.
5. **Innovative procurement methods**, you may use other methods with the approval of the Secretary.

Whatever the required procurement method, you must document the following:

- the rationale for the method of procurement;
- justification of contract type;
- basis for contractor selection/rejection;
- basis for cost or price;
- definition of evaluation criteria; and
- proper allocations of costs related to procurement and staffing which will be charged to the VCDP (includes preparing and maintaining time sheets).

The minutes of meetings that describe these items will be adequate. You must also maintain employment data which identifies the municipal work forces and staff complement by race, sex, age, national origin, handicap and familial status.

Make sure that the following steps are included in your procurement process:

- proper Equal Opportunity clauses in Request for Proposals (RFP's) and ads for personnel;
- proper procurement methods followed in all contract and personnel hires;
- opportunities provided for minority, women-owned and local small businesses and Section-3 businesses in meeting your procurement needs.

All VCDP-funded projects must be accessible to all members of the public and all activities (administration, consulting, and construction) must be nondiscriminatory in design, application, and performance. You are required to ensure this by:

- verifying that the prime contractor and subcontractors are not listed on the HUD debarment list: www.sam.gov
- making sure that a prime contractor has been certified and registered with the Vermont Secretary of State's Office:
www.sec.state.vt.us/seek/database.HTM#corporations
- including written nondiscriminatory federal policy provisions in contracts (certifying to affirmative action-Equal Employment Opportunity); and
- documenting outreach efforts to solicit disadvantaged, minority, women-owned, and local business enterprises through newspaper advertisements, Dodge Reports, Works in Progress, and VCDP supplied listings.

Using the Same Design Professionals for Both Planning and Implementation Phases

Using the same architect or engineer for both planning and implementation is allowed if certain procedures are followed. If you are satisfied with the qualifications and performance of the consultant(s) who provided facilities planning or design services for the project and want to retain them for services during construction, you may do so without further public notice and evaluation of qualifications provided:

- the initial RFP clearly stated the possibility that the firm or individual selected for planning might be awarded an agreement to provide services during construction;
- you attest that the original selection process was conducted in accordance with the appropriate procurement process;

- no more than three years have passed since the date of formal notification of selection.

The following entities may be contacted to secure names of businesses that are listed as women-owned, minority and local small businesses:

Vermont Agency of Transportation 1 National Life Drive Montpelier, VT 05633-5001 Tel: (802) 828-2717 http://apps.vtrans.vermont.gov/dberegistry/dberegistry.aspx
VT Associated General Contracts State Street Montpelier, VT 05602 Tel: (802) 223-2374
Vermont Works for Women 32A Malletts Bay Ave. Winooski, VT 05404 Tel: (802)655-8900 Toll Free: 800-639-1472
U.S. Small Business Administration 87 State Street Montpelier, VT Tel: (802) 828-4422

Note: In the event all bids received are over the amount budgeted the Grantee and/or Subgrantee/Borrower (Developer) reserves the right to conduct value engineering with the lowest and most qualified bidder.

Further details on procurement procedures appear under Agency Procedures, Chapter 10.

Contracts

Now that the necessary goods and services have been properly procured, you will need to develop the legal documents necessary to establish contractual obligations and rights. There must be written contracts for all purchases with VCDP grant funds except small purchases under \$1,000. Expenditures for administrative services, materials and construction require contracts. As with all contractual obligations, you are advised to seek the advice of legal counsel concerning the rights, duties, obligations and liabilities arising from these legal arrangements.

Minimum Requirements

All contracts and written agreements must contain the following minimum requirements:

1. correct names of the parties to the contract;
2. method of compensation, including a fixed price and the basis for payment which specifies what must be done before payment will be made;
3. specific scope of services, including a detailed description of the work to be performed and/or products to be delivered, the schedule for performance, and specification of materials;
4. effective date of the contract and specific length of time over which the contract is to be performed;
5. geographic location of contract performance;
6. basis for termination, default or cancellation;
7. how disputes are to be resolved;
8. provision for amendments;
9. reference to the Grant Agreement number and its activities under which the funds are being paid with provisions binding the contractors to the terms of the Grant Agreement;
10. contract representatives of grantee, contractor, subcontractor(s);
11. there are four federal pass through requirements:
 - a) Procurement Procedures;

- b) equal opportunity;
- c) retention of and access to records; and
- d) Audit Requirements, where applicable;

12. Signatures.

The required language for these pass-through requirements can be found in Attachment D Sections VII, X, XII and XIV of the Grant Agreement. See the Grants Management Guide Chapter “The Grant Agreement”.

- a) inserting the language directly into the contract;
- b) citing the Grant Agreement by number and attaching it to the contract as an appendix; or
- c) citing the Grant Agreement sections by number and incorporating the Grant Agreement by reference.

It is essential that the contract be consistent with the requirements of the Grant Agreement, since that is the “master” contract. Pay particular attention to the terms and conditions concerning the scope of the project, implementation schedules, and budgeted amounts.

Contracts may also need items such as employment agreements, schedules of payments, reporting requirements, etc. For contracts over \$10,000, you must report contracts awarded as described in the Progress Report.

Sometimes you must submit to the Department contracts or loan agreements for review and approval. This will be specified in Attachment A of the Grant Agreement. Failure to do so will delay the requisition process.

DUNS Numbers, SAMS registration, and Debarment

All parties that will receive VCDP funds, including contractors, must have a Data Universal Numbering System or DUNS number, which is a nine-character identification number provided by the commercial company Duns & Bradstreet. They also must all register with the System for Award Management (SAM). These two requirements confirm that the party has not been debarred from receiving federal funds. Additionally, they may not be on the State's debarment list.

A DUNS number can be requested online at: <http://fedgov.dnb.com/webform>. Once you have a DUNS number, you can register for SAM at www.sam.gov. The State's debarment list is at: <http://bgs.vermont.gov/purchasing-contracting/debarment>. These steps must all be complete and documented prior to signing the contract.

Construction Contracts

The construction phase of your project consists of four major components:

- development of the bid document, including plans and specifications, cost estimates, and deductive alternatives, and determination of the prime contractor;
- development and execution of the construction contract;
- conduct of the pre-construction conference and the start of construction; and
- ensuring labor compliance during the course of construction.

The construction contract will include all items that are in the bid package, along with the standard contract terms and conditions, bid proposal, contractor certifications, and bond and insurance forms. You should be concerned with both the body of the contract as well as the compliance requirements which are frequently included as exhibits to the base contract. Please refer to the Department's [Sample Construction Contract](#) that includes all the minimal requirements.

Specific items which must be covered in any construction contract funded through the VCDP are:

1. citation of Grant Agreement by number, clauses that relate to Attachment A of the Grant Agreement (Scope of Work to be Performed and Special Conditions) and Attachment B of the Grant Agreement (Payment Provisions and Project Budget) that affect the construction contract;

2. clauses that contain information which specifically delineates who is responsible for accomplishing each specific construction activity, including but not limited to, securing rights of way, easements, and all necessary permits;
3. clauses which specifically deal with insurance and bonding, including but not limited to bid bonds, performance bonds, payment bonds, Worker's Compensation, contractor liability insurance; all bonds and insurances must be in the proper amounts; (information on Construction Bonding appears in Agency Procedures, Chapter 11);
4. clauses dealing with any unique construction requirements, such as, materials' storage and removal, traffic control, work hours, protection of property, etc.;
5. clauses to ensure the pass-through requirements of the VCDP to primary contractor and subcontractor: access to records, conflict of interest, Audit Requirements, and equal employment opportunity, to the extent to which they apply;
6. clauses relating to release of liens by contractor or subcontractor;
7. clauses which specify the relationship of primary contractor to subcontractor and who is responsible for which activities;
8. Labor Standards requirements which include a copy of an official wage determination and reference to all Davis-Bacon requirements including Copeland Anti-Kickback Provisions and provisions of the Contract Work Hours and Safety Standards Act;
9. complete names, titles and addresses of all parties and the complete Federal Identification Number (FID) or social security numbers of the contractor(s);
10. specific dates of performance (start and completion);
11. fixed amount of payment;
12. definition of what constitutes substantial completion and final completion;
13. method and schedule of payment;
14. clause requiring complete documentation of requests for payment from the primary contractor and the subcontractors;
15. method by which change orders are to be accomplished and stating that they must be reduced to writing and signed by all parties prior to work being done;

16. provision for written notice to proceed with work and to stop work;
17. progress reporting requirements;
18. clauses relating to monitoring activities and responsibilities of the owner and prime contractor in carrying them out;
19. provisions for termination, default, cure (if applicable), arbitration of disputes and power to resolve; and
20. retainage or contingency to be held.